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OFFICE OF PETITIONS

In re Application of :
Roberts, Jerry B. :
Application No. 09/882,338 :
Filed: September 5, 2001 :
Attorney Docket No. 57399US004 :

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 23, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed February 14, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on May 17, 2005. A Notice of Abandonment was mailed on July 26, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.¹

The instant petition lacks item (1). Petitioner stated that an RCE, a copy of the August 9, 2005 Amendment, and an IDS Transmittal w/ 1449 were included with the instant petition. However, the Office has not yet received the above items. Petitioner should resubmit any documents that constitute the response to the Office action previously mailed on February 14, 2005.

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

² See MPEP 711.03(c)(III)(C) and (D).

Further, 35 U.S.C. 41(a)(7) and 151 each require payment of the issue fee and publication fee as a condition of reviving an application abandoned lapsed for failure to pay the issue fee and publication fee. Therefore, the filing of a continuing application without payment of the issue fee, publication fee or any outstanding balance thereof is not an acceptable reply in an application abandoned or patent lapsed for failure to pay the issue fee, publication fee or any portion thereof. Accordingly, \$1700.00 will be charged to petitioner's deposit account for the issue fee and publication fee as authorized.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

Further correspondence with respect to this matter should be addressed as follows:


By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
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By hand: Customer Window located at:

 U.S. Patent and Trademark Office
 Customer Service Window Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.


Liana Chase
Petitions Examiner
Office of Petitions

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